

NORMA PAULUS
State Superintendent
of Public Instruction



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January 9, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William Kennard
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Dear Mr. Kennard:

Enclosed is the original and 14 copies of a petition for waiver addressed to the Commission. Copies of the petition are being served today on each school district in the state of Oregon.

Sincerely,

C. Gregory McMurdo
Deputy Superintendent
of Public Instruction

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Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 98-

Petition for Waiver

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Act) provides discount rates on designated telecommunications services for eligible schools and libraries. Specifically, Section 254(h)(1)(B) provides that the discount shall be an amount that the Federal Communications Commission (FCC), with respect to interstate services, and the states, with respect to intrastate services, determines is appropriate and necessary to ensure affordable access to and use of such services by such entities.

On May 8, 1997 the FCC issued its Report and Order, CC Docket 96-45, Order No. 97-15 (Order) implementing the key portions of section 254 of the Act which address universal service. The Order identifies interstate and intrastate services to be discounted, sets forth the discount levels for interstate services, and states that the funding will begin January 1998. Schools and libraries must file applications to be eligible for discounts.

In the Order, the Commission concluded that the school district or state may compute an average discount; in either case, "the state or district shall strive to insure that each school receives the full benefit of the discount to which it is entitled." See

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 9051 (1996).

The FCC has authority to waive its rules if there is good cause shown, 47 C.F.R. § 1.3 (1996). The FCC may exercise its authority to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). In WAIT Radio the court held that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.

Oregon law presents such special circumstances that warrant a deviation from the general rule. A waiver serves the public interest by assuring equity in providing federal universal service support for eligible schools and libraries in Oregon. For reasons of equity and efficiency, Oregon wishes to aggregate the discount at the state level and apply that rate to all schools using the average discount rate for the state.

The Oregon school finance formula, unlike that in most states, ensures that each Oregon student receives the funding necessary to provide approximately the same quality of education. Because of two recent amendments to the Oregon constitution, the legislature developed a state funded and tightly controlled equitable school finance formula. Oregon no longer has so-called “rich districts” and “poor districts.” The only variation in the formula is dependent on the circumstances of the child, not the wealth of the district. In other words, each child in Oregon is allotted the same number of dollars, except for children with special needs such as those who are poor, disabled or have limited English, are pregnant or parenting teens, are neglected or delinquent students, or are children being educated in remote, small schools. There is no loophole

to avoid the formula. A district may not pass a supplemental local levy to support its operations. To restate the issue, while there are economically disadvantaged children in the state, state law no longer allows for “economically disadvantaged institutions.”

In addition to its equalized school support formula, Oregon has a contract through its Department of Administrative Services that equalizes telecommunications rates for schools. All districts are eligible for a 56KB line at \$106, for example.

The Telecommunications Act calls for providing schools with affordable access to the Internet and other advanced technologies. The Snowe-Rockefeller provision is intended to ensure that children in poorly financed schools benefit from the new telecommunications tools. As the Senate Committee Report states in discussing Section 310 of the bill which added a new Section 264 to the Act (the Snowe-Rockefeller amendment): “This section also requires that any telecommunications carrier shall provide those services included in the definition of universal service to elementary and secondary schools at rates that are **affordable** and not higher than the incremental cost to the carrier of such services.” S. Rep. No. 104-23 at 55 (1995)(emphasis added).

Oregon is working to achieve equality by eliminating the access gap between technology “haves” and “have nots.” The Oregon situation, with its equitable school finance formula, was apparently never considered when the Federal-State Joint Board adopted the discount schedule. Oregon’s school finance formula furthers the purpose of Snowe-Rockefeller of providing universal service to schools at affordable rates. In Oregon’s case, applying the proposed discount formula to its schools will not enhance equity but will actually decrease it.

Oregon School Superintendent Norma Paulus wrote the Commission in June asking that the FCC allow Oregon the flexibility to aggregate at the state level. No response has been received to that request and the Oregon Department of Education has been advised to file a petition for waiver with the Commission.

WHEREFORE, the Oregon Department of Education requests a waiver under 47 C.F.R. § 1.3 (1996) of the requirement to apply the discounting matrix to individual schools in the state in order that the state aggregate discount rate may be used.

Respectfully submitted this 9th day of January, 1998.

A handwritten signature in cursive script, reading "Norma Paulus". The signature is fluid and elegant, with a large loop at the end of the last name.

Norma Paulus
State Superintendent of
Public Instruction